

1 California. Now, I can either on voir dire or perhaps counsel
2 will stipulate that Corte Medera is in -- a considerable
3 distance outside the 1 mV contour of the proposed station.
4 And so, therefore, I would raise the same objections.

5 MR. SHUBERT: I'll stipulate the fact that it is
6 outside the 1 mV, Your Honor.

7 JUDGE LUTON: Same ruling. However, without some
8 showing that these activities had some reasonable connection
9 with the service area, this evidence will count for nothing.

10 MR. FITCH: And that, and that's the same for your
11 prior ruling, Your Honor?

12 JUDGE LUTON: Yes, it is.

13 MR. FITCH: All right. I would move on then to page
14 4, subheading Employment. The paragraphs -- I'm referring now
15 specifically to paragraphs 9 and 10. And I would move, Your
16 Honor, that these paragraphs be struck. And for the record
17 my, my objection for striking these paragraphs is they have,
18 again, nothing to do with the comparative case, they're not
19 broadcast-related. I -- presumably no claim is being made for
20 broadcast experience. And for that reason, Your Honor, I
21 would object.

22 JUDGE LUTON: All right. What is the purpose of the
23 offering paragraph 9 and 10?

24 MR. SHUBERT: It's background on the applicant, Your
25 Honor, on the principals.

1 JUDGE LUTON: Background on the applicant, not
2 intended to seek any kind of comparative points or
3 consideration. It'll be viewed as such and I think that takes
4 care of the objection. Does it not? No claim for comparative
5 credit will be made on the basis of the matter stated in
6 paragraphs 9 and 10.

7 MR. FITCH: Well, will any, will any be -- any
8 purpose be made of this other than for background information?
9 In which case --

10 MR. SHUBERT: At this -- not knowing what your
11 examination is, I, I can't respond to your question. At this
12 point this is offered to show what her experience is. I would
13 -- I mean, it is, it is plain knowledge that, that comparative
14 credit cannot be claimed for working in a restaurant. I, I
15 don't know that there is much difference between working in a
16 restaurant and this except they're related -- I would -- you
17 know, advertising is involved directly or indirectly. And it
18 shows sales experience. But that's not a comparative
19 enhancement. You don't, you don't get a comparative
20 enhancement.

21 JUDGE LUTON: Well, the information states --
22 background information only -- the information is background
23 information only. It has no effect on the comparative case.
24 I think Mr. Fitch, when you led off your objections, said that
25 this information doesn't relate to anything. I assume you

1 | meant to the case as it presently stands, and the only thing
2 | that it -- that that could comprehend would be the comparative
3 | issue. And we've got information here which is stated to be
4 | unrelated to the comparative issue. Therefore, it must be
5 | considered, if at all, only as biographical information.
6 | Only. That's the way I'm going to view it.

7 | MR. FITCH: That's it, Your Honor. I have no
8 | further objections.

9 | JUDGE LUTON: All right. Then 2 is received.
10 | (Whereupon, the document referred to
11 | as Moonbeam Exhibit No. 2 was
12 | received into evidence.)

13 | JUDGE LUTON: Before we get to the cross-
14 | examination, I want to go back to the Request for Permission
15 | to File Appeal for just a moment. I, too, Mr. Shubert, am not
16 | interested in getting caught up in a huge waste of time in
17 | trying a matter which ought not be tried, because the facts
18 | are clear. The facts aren't clear on the record right now
19 | because the issue hasn't, hasn't been tried, but anticipating
20 | what your showing would be at such a hearing, I can see where
21 | a wasting of time might have occurred, probably will have
22 | occurred. Of course I'm saying all of this before Mr.
23 | Willson's had a chance to respond, if Willson is to have a
24 | chance to respond and I'm not sure about that yet.

25 | One of the requirements for permitting an

1 interlocutory appeal is the that the question involved be a
2 novel one. I guess I don't want to be in a situation of
3 determining that the question isn't novel so that we proceed
4 onto hearing and then the facts come out as Mr. Shubert has
5 assured us they will come out, in which event we will have
6 wasted a lot of time. I have a concern on that score. What
7 is the novelty associated with the question -- what is the
8 question and what's the novelty --

9 MR. SHUBERT: I would have to --

10 JUDGE LUTON: -- that Moonbeam sees here?

11 MR. SHUBERT: I would submit, Your Honor, that the
12 novelty is that by adding this issue since the amendment was
13 covered in the hearing designation order, we are presenting a
14 new issue of law that is contrary to existing law and that is
15 that if, if the Review Board -- or if the staff has considered
16 an amendment and not added an issue, then annex essentially
17 says it's, it's not available -- or not open for
18 reconsideration.

19 JUDGE LUTON: You said considered an amendment, but
20 the problem arises from the application as it was originally
21 filed, not, not from the amendment. You mean --

22 MR. SHUBERT: But the staff had the application as
23 originally filed and the amendment.

24 JUDGE LUTON: -- and the staff gave --

25 MR. SHUBERT: They addressed the amendment.

1 JUDGE LUTON: -- considered, or rendered its
2 considered judgment on the matter and therefore I was
3 foreclosed from, from adding an issue on that basis.

4 MR. SHUBERT: Essentially, Your Honor, yes.

5 JUDGE LUTON: Okay. That's not an argument you made
6 in your opposition?

7 MR. SHUBERT: No, it is not.

8 JUDGE LUTON: It is not.

9 MR. SHUBERT: But by adding the issue it presents a
10 novel question.

11 JUDGE LUTON: What's novel about it? Judges make
12 mistakes all the time.

13 MR. SHUBERT: Well --

14 JUDGE LUTON: I think I will ask Willson to make a
15 response here. I think I'm now able to pretty well anticipate
16 the outline anyway of their request, so that I'll now request
17 from Willson a written response and that'll be all. I won't
18 -- no more after that and you're in hearing now. Can I
19 request this response to be made within five days after the
20 hearing is completed? After this --

21 MR. FITCH: Five business days?

22 JUDGE LUTON: Business days.

23 MR. FITCH: Yes, Your Honor.

24 JUDGE LUTON: All right. I'll do that then. That's
25 my request.

1 MR. FITCH: Yes, sir. Thank you.

2 JUDGE LUTON: Back to the hearing. Is the witness
3 now available for cross-examination?

4 MR. SHUBERT: Yes, Your Honor, the witness is
5 available for cross-examination.

6 JUDGE LUTON: Let us proceed with the cross.

7 MR. GAMMON: Your Honor, if I may I, I would conduct
8 the cross-examination.

9 JUDGE LUTON: You certainly may proceed.

10 MR. GAMMON: Thank you.

11 CROSS-EXAMINATION

12 BY MR. GAMMON:

13 Q Mrs. Constant, my name is James Gammon and I
14 represent Mr. Willson here. Could I ask as a preliminary
15 matter, have you ingested any drugs or alcohol or anything
16 else that might cause you not to be able to give the best
17 testimony of which you are capable here this morning?

18 A No.

19 Q Fine. You're not ill, taking medication for flu, or
20 anything like that?

21 A No.

22 Q All right. Thank you. You've been an applicant
23 before the FCC before this occasion, have you not?

24 A Yes.

25 Q All right. On two occasions?

1 A Yes.

2 Q And would it be fair to state that you are aware of
3 the acute need of the Federal Communications Commission to
4 receive responses and representations from its applicants
5 which are accurate in all respects?

6 MR. SHUBERT: Objection. I think it calls for a
7 legal conclusion in part. If he asks for what her belief is I
8 wouldn't object. But he's asking for a legal conclusion, Your
9 Honor, and I object to the question.

10 MR. GAMMON: I'm asking if the witness is aware of
11 this.

12 JUDGE LUTON: If the witness is aware of what?

13 MR. GAMMON: The need of the Commission to have
14 accurate -- fully accurate responses from its applicants.

15 JUDGE LUTON: It's not a legal conclusion that's
16 being sought. The objection is overruled.

17 WITNESS: Would you repeat the question?

18 BY MR. GAMMON:

19 Q You don't recall the question?

20 A It was a long question.

21 Q Aren't you aware that the Commission requires and
22 needs fully accurate responses from its applicants in all
23 particulars?

24 A Yes.

25 Q And you've been aware of that for years, haven't

1 you?

2 MR. SHUBERT: Objection. It assumes a fact not in
3 evidence.

4 MR. GAMMON: Well, Your Honor, this is cross-
5 examination. I'm going to ask a lot of questions that are not
6 in evidence and have no basis in evidence yet.

7 MR. SHUBERT: Lay, lay a foundation. Then I don't
8 have to object.

9 MR. GAMMON: I don't need to lay a foundation, Your
10 Honor.

11 JUDGE LUTON: Overruled.

12 WITNESS: Yes.

13 MR. GAMMON: Oh, the -- this material we got this
14 morning, this Petition for Leave to Amend, could that be
15 placed before the witness, counsel?

16 BY MR. GAMMON:

17 Q While that's coming up to you, this is the, the
18 matter that was just brought to our attention this morning
19 where you're proposing to amend to reveal that your husband,
20 Frederick Constant, has acquired a broadcast interest in
21 Ketchum, Idaho. Do you recall that?

22 A Yes.

23 Q All right.

24 MR. SHUBERT: I don't know that I have another copy,
25 counsel.

1 MR. GAMMON: That's fine. We'll just proceed this
2 way.

3 BY MR. GAMMON:

4 Q Paragraph 4 of the petition it's stated, quote,
5 nevertheless -- nonetheless, excuse me, "Nonetheless, due to
6 an unintentional administrative oversight, this change was not
7 formally reported to the Commission by Moonbeam." You're
8 familiar with that language, are you not?

9 MR. SHUBERT: Objection. He hasn't shown that she's
10 read the document. It is a legal pleading of counsel.

11 MR. GAMMON: Fine. I withdraw the question, Your
12 Honor. This is a petition filed on your behalf this morning,
13 dated -- excuse me. It's dated July 21 -- dated July 21
14 containing a July 20 amendment signature of yours. Are you
15 telling us you have not seen that before this moment?

16 MR. SHUBERT: Objection, Your Honor. He's not
17 talking -- is he talking about the amendment or is he talking
18 about the petition?

19 MR. GAMMON: The whole, the whole ball of wax is in
20 front of her, Your Honor. We can, we can have these
21 interjections all day and we'll be here all day.

22 MR. SHUBERT: And I, and I'm going to object to the
23 line of questioning, Your Honor. It has nothing to do with
24 the direct case. It's outside of the scope of the direct
25 case. We're not arguing the petition today.

1 MR. GAMMON: Your Honor, this is all going to be
2 clear. It all ties in.

3 MR. SHUBERT: Then I expect to be able to examine
4 your witness as to whether or not he has reviewed all of your
5 pleadings prior to the time they're filed.

6 JUDGE LUTON: Overruled.

7 BY MR. GAMMON:

8 Q Have you seen that before just now? Have you seen
9 that document? Pay no attention to the pencil remarks I've
10 made on the page I pointed to.

11 A I signed the amendment.

12 Q Yes. Have you seen the pleading? The pleading
13 entitled, Petition for Leave to Amend? Had you seen that
14 before I showed it to you this morning here?

15 A I was aware my, my attorney was going to prepare
16 this since I had signed the amendment.

17 Q Now try my question. Had you seen it before? Did
18 you read it before I handed it to you?

19 A Yes, I have read it.

20 Q When did you first read it?

21 A I think I probably saw a draft of this or saw it
22 yesterday.

23 Q All right. Thank you. Now, paragraph 4 is a
24 reference to the fact that this wasn't -- this change was not
25 formally reported to the Commission before "due to an

1 unintentional administrative oversight." What was the
2 unintentional administrative oversight? Or do you know?

3 A I'm assuming that by unintentional it means someone
4 forgot.

5 Q No, what do you know?

6 A Someone --

7 Q Don't tell us what you assume. Please tell us what
8 you know, ma'am.

9 A Someone forgot to report it.

10 Q All right. Who forgot to report it?

11 A I forgot to report it, my attorney forgot to report
12 it.

13 Q All right.

14 JUDGE LUTON: Mr. Gammon, if you want to -- if, if
15 Willson wants to oppose this Petition for Leave to Amend, it
16 can do it in writing. What are we doing here?

17 MR. GAMMON: We're just about to ask the last
18 question in this line, Your Honor. I'm trying to establish
19 now, because it does relate to her application which she
20 signed in November of '91 and again in March of '92 as an
21 amendment, when she first became aware of the need to amend.
22 It was unintentional. Okay. We know that. It was
23 unintentional on her part. Now, when did she first become
24 aware. That's my question now.

25 JUDGE LUTON: When did she become aware of the need

1 to submit an amendment correcting the response to the --

2 MR. GAMMON: An application response, yes.

3 MR. SHUBERT: Objection on relevancy.

4 JUDGE LUTON: Wait a minute. Excuse me.

5 MR. SHUBERT: Sorry, Your Honor.

6 JUDGE LUTON: When did she first become aware of the
7 need to, to file -- which amendment?

8 MR. GAMMON: It's an amendment reflecting the fact
9 that her husband's got a broadcast interest, which --

10 JUDGE LUTON: Oh, when did she become aware of the
11 need to file this amendment --

12 MR. GAMMON: Yes. Exactly.

13 JUDGE LUTON: -- is what you're asking.

14 MR. GAMMON: Because in her app-- all this time
15 until this morning, her application shows that nobody in her
16 family or related to her has a broadcast interest. Now, we
17 come in here this morning and we see that there is one and
18 she's reporting it. I'm just trying to say, well, when did
19 you first become aware of the need to report it, ma'am?
20 You're an applicant before this Commission.

21 JUDGE LUTON: What's it got to do with -- well. As
22 the case presently stands, or at least insofar as we're going
23 to deal with the case today, we're going to deal only with the
24 standard comparative issue.

25 MR. GAMMON: That's part of it.

1 JUDGE LUTON: Diversification. This witness does
2 not -- this, this amendment doesn't say this witness has
3 acquired any broadcast property. It says her husband has and
4 you have in mind presumably, Mr. Gammon, the notion of spousal
5 attribution here?

6 MR. GAMMON: Yes.

7 JUDGE LUTON: Do you? And I remember seeing some
8 pleadings about this or references in some pleadings about the
9 matter. It's Moonbeam's position, I take it, that the
10 doctrinal spousal attribution has no application. Is that the
11 position you would take?

12 MR. SHUBERT: All we're doing -- we're reporting it
13 for informational purposes, Your Honor, and if it -- it says
14 in the amendment there's no comparative upgrading can attach
15 from this. It can't work to our benefit.

16 MR. GAMMON: But it can work to your disadvantage.

17 JUDGE LUTON: It sure can.

18 MR. GAMMON: Well, Your Honor, this is more than
19 reporting. This is to reflect, to reflect a change in the
20 application.

21 MR. SHUBERT: Your Honor, it's a 1.65 amendment
22 anyway you cut it. And the prior amendments that were filed,
23 were filed prior to the time this interest was acquired. And
24 if you want to examine --

25 MR. GAMMON: The question is why -- why -- the

1 question is -- I'm sorry. I interrupted you, counsel. I beg
2 your pardon.

3 MR. SHUBERT: I mean what's the purpose of the line
4 of questioning. We're here on the comparative case. Is it,
5 is it run to the, the preparation of the application?

6 MR. GAMMON: Well, certainly it does.

7 MR. SHUBERT: Then continue along.

8 MR. GAMMON: Thank you.

9 MR. SHUBERT: I don't have an objection to that.
10 But I see him arguing this amendment and whether or not she
11 should have known something.

12 MR. GAMMON: Your Honor --

13 MR. SHUBERT: She testified that she --

14 MR. GAMMON: Oh, my goodness.

15 MR. SHUBERT: -- overlooked it, Your Honor. What
16 more can we do?

17 MR. GAMMON: Well, now we'll just find out when you
18 first noticed you overlooked it. That's all. I mean did she
19 -- did she find out yesterday? Okay. That's the answer.
20 We're done. When did she find out she'd made a mistake, that
21 she should have -- when did she first become aware that her
22 husband acquired the interest?

23 JUDGE LUTON: That's a different question. What
24 difference does it make?

25 MR. GAMMON: It has to do with, with the whole

1 integration question. You're relying on this witness to be a
2 certain kind of person in the end. You have to write -- make
3 your findings on that. The information that's come in by way
4 of background on the other side, this is further information
5 by way of background to this witness.

6 MR. SHUBERT: I submit, Your Honor, it has
7 absolutely --

8 JUDGE LUTON: What difference does it make when she
9 became aware of it?

10 MR. GAMMON: Well, Your Honor --

11 JUDGE LUTON: Unless, unless it would support an
12 issue charging cover-up or something. I don't know.

13 MR. GAMMON: Well, no, it -- I don't say it has to
14 go that far, Your Honor. But if a witness signs an
15 application saying -- answering no to a question about other
16 family interests and then finds out that that answer became
17 inaccurate and sat on the information, I think that's
18 something you'd want to know. Until the moment of crunch
19 comes with a hearing. I'm not saying we didn't know about it
20 before. Sure, we brought it up in deposition. But that was a
21 month and a half ago. I won't argue further, Your Honor. I'm
22 prepared for your ruling.

23 JUDGE LUTON: All right. Okay.

24 MR. GAMMON: If you're going to overrule it, then
25 I'm not going to argue further.

1 JUDGE LUTON: The question is when did this witness
2 become aware of this administrative oversight, I believe it's
3 called?

4 MR. GAMMON: Yes. When did she become aware that
5 her application spoke -- now speaks incorrectly because of
6 changed circumstance?

7 JUDGE LUTON: And the reason that information is
8 relevant to the case as it presently stands is what now? Once
9 again please?

10 MR. GAMMON: Shows the mental disposition of this
11 witness to respond to FCC questions and to keep her
12 application current, among others.

13 MR. SHUBERT: There's no -- here, Your Honor.

14 JUDGE LUTON: Objection is sustained.

15 MR. GAMMON: Yes, sir.

16 BY MR. GAMMON:

17 Q In your original application you represented that
18 the -- that you would work full-time at the proposed Calistoga
19 station in the event of a grant, did you not?

20 A Yes, I did.

21 Q And do you recall that at the same point in time,
22 that is, at the time you filed your application and signed off
23 on it in November of 1991, you were also proposing to the
24 Commission to work full-time at another station if you got
25 that grant?

1 A No, I wasn't.

2 Q You're not -- you weren't -- you're not aware or you
3 did not have it -- another representation on file with
4 integration?

5 A No, I didn't.

6 Q Oh. Well, are you sure of that?

7 A Yes.

8 Q Okay.

9 A I was not proposing to work at two stations full-
10 time.

11 Q At the same -- at -- simultan-- at the same point in
12 time.

13 A Especially at two different states.

14 Q Well, let me show you a document -- counsel, I'll
15 show it to you first -- it came to us in document production
16 and someone typed on the bottom of it from file no.
17 BPH-110516MN, application of Moonbeam, Inc., for a new FM
18 station in Eagle, Idaho, dismissed January 24, 1992.

19 MR. SHUBERT: That's correct. And there was a
20 settlement agreement pending at the time the application was
21 filed, Your Honor.

22 BY MR. GAMMON:

23 Q Is this the, the top part, the, the language that
24 was, that was in the Eagle application in November 1991?

25 A The Eagle application was in May of '91.

1 Q And it contained this language?

2 A In May of '91 it did contain this language, yes.

3 Q And in November of '91 it contained the same
4 language, didn't it?

5 A The Eagle application was settled before I applied
6 for the Calistoga station in November of '91.

7 Q How do you know that?

8 A Through my FCC attorney.

9 Q Don't you see what someone typed down here,
10 presumably you or someone under your authority. It said that
11 it was --

12 A That was the final.

13 Q If that's when it -- that's when the application was
14 dismissed, wasn't it? January of '92.

15 A It was settled before this, because it was --

16 Q You signed some papers you mean?

17 A Yes.

18 Q But it was still on file, wasn't it?

19 A Technically I suppose it was.

20 Q All right. So at that point in time, technically
21 you had two conflicting representations on file at the
22 Commission for full-time integration, right?

23 MR. SHUBERT: Objection to the characterization in
24 the question, Your Honor.

25 JUDGE LUTON: Well, I, I -- if I follow it, I, I

1 think that -- the matter is clear enough. The witness has
2 stated that as a practical matter and as a fact, she was
3 through with the Eagle application at the time the Calistoga
4 application was filed. Mr. Gammon points out that as a
5 technical matter she did have two conflicting applications on
6 file. Is that about it?

7 MR. GAMMON: Two conflicting representations --

8 JUDGE LUTON: Representations, I'm sorry.

9 MR. GAMMON: -- is the crux of the matter, yes.

10 JUDGE LUTON: Yeah, as a technical matter. I think
11 the difference is clear. I don't -- I can't say that either
12 characterization -- I can't say that Mr. Gammon's
13 characterization is incorrect or wrong. I think it's, it's
14 clear enough so that I'll overrule the objection. We know
15 what we're talking about here.

16 MR. GAMMON: Yes. As a technical matter, the two
17 representations were on file at the same point in time, were
18 they not?

19 WITNESS: As a technical matter only.

20 MR. GAMMON: Sure. Okay. And are you aware -- I'll
21 show it to you if you're not. Are you aware that the language
22 from the Eagle application in 1991 was set forth precisely in
23 the same words in the Calistoga application in -- later in
24 1991, with the exception of an added sentence in Calistoga
25 about your being a female?

1 MR. SHUBERT: Objection on the grounds of relevance.
2 What is it relevant to the issues that we're trying today, the
3 standard comparative issue? Integration diversification.

4 MR. GAMMON: This is the integration statement.

5 MR. SHUBERT: But the -- same.

6 MR. GAMMON: -- all ties in in the end, Your Honor.
7 You can't have every question a blockbuster.

8 MR. SHUBERT: -- a foundation here.

9 MR. GAMMON: Well, maybe I haven't had any
10 blockbusters. I'm just building foundations here.

11 JUDGE LUTON: Overruled.

12 BY MR. GAMMON:

13 Q Are you aware that the same language was used in, in
14 Calistoga as, as was used in Eagle? Exactly the same?

15 A I probably do a lot of things exactly the same.

16 Q Would you like me to show them to you.

17 A No. I, I accept your --

18 Q All right.

19 A -- a true statement. I, as I said, I probably do a
20 lot of things exactly the same.

21 Q Yeah. Now, let me move on.

22 JUDGE LUTON: Mr. Gammon, if you're going to change
23 areas let's take a ten-minute recess.

24 MR. GAMMON: Sure, Your Honor.

25 (Whereupon, off the record from 11:02 a.m. to 11:10

1 a.m.)

JUDGE LUTON: -- let us continue.

2

3 MR. GAMMON: Mrs. Constant, your Hearing Exhibit No.
4 1, at the top of page 2 contains an Integration of Ownership
5 and Management statement and Exhibit 2 contains -- looks to me
6 like the same statement under integration with reference to
7 your duties, etc., as general manager. Could you tell us, is,
8 is there a difference in the two statements? Or if not, why,
9 why did you repeat them?

9

10 MR. SHUBERT: This has to do with the standard,
11 standard comparative issue, correct?

11

12 MR. GAMMON: Oh, my goodness. Your Honor, I'm just
13 trying to find out how these exhibits are put together. If
14 there's no difference, well, the witness can tell us.

14

15 JUDGE LUTON: I didn't hear an objection.

15

16 MR. GAMMON: Oh. I'll try to be more sensitive.

16

17 WITNESS: Yes, they're the same.

17

18 BY MR. GAMMON:

18

19 Q Okay. Could you tell us why they're in here twice?
20 That integration is in here twice?

20

21 A They're two different exhibits.

21

22 Q Okay. Is, is that your answer?

22

23 A Yes.

23

24 Q You determined to put it in each exhibit so it would
25 be in each exhibit?

25

1 A Yes.

2 Q Okay. What, what was the extent of your involvement
3 in putting together, let's say, Exhibit 2?

4 A I provided the information.

5 Q And was it given to you in draft form and then you
6 corrected it or anything like that? Or was it given to you
7 after you talked orally? Was it typed when you first saw it?
8 Could you help us along those lines?

9 A No. I wrote out, you know, an outline of all the
10 pertinent information. Where -- my address, the property I
11 own, all the facts. When I was born.

12 Q Okay.

13 A Where I live -- I lived in Sonoma County most of my
14 life.

15 Q And then it was typed up and sent to you?

16 A No. I -- I'm not a very good typist so I usually
17 write things out in longhand.

18 Q I see. How did it get in typed form?

19 A My attorney's office typed it.

20 Q And then you signed it on the 30th day of June 1993
21 as it indicates here?

22 A Yes.

23 Q And you read every word of it carefully before you
24 signed it? Is that true?

25 A Yes, I did.

1 Q Sure. Okay. One thing confused me here as I was
2 trying to read through it. On page 5 you state that
3 everything in this, in this exhibit -- declaration is true and
4 correct of your personal knowledge and then the language with
5 the exception of such statements which the Commission may take
6 official notice as well as such statements based upon
7 incorporation by reference to materials in the files of the
8 Commission and as to such statements, you believe them to be
9 true. Do you see that language?

10 A Yes.

11 Q Could you tell us in Exhibit 2 which statements are
12 those of which the Commission can take official notice or are
13 based upon incorporation by reference to materials in the
14 files of the Commission, as opposed to materials that you know
15 are true?

16 A I'm sorry. I don't understand your question.

17 Q To which -- to what language in this exhibit does,
18 does this language that I've quoted you, or paraphrased to
19 you, apply?

20 A This last sentence was legal language that was
21 prepared by, by my attorney. Since I'm not an attorney, I'm
22 sorry, I can't answer your question.

23 Q Okay. Well, let's go to page 2.

24 MR. SHUBERT: Of which exhibit?

25 MR. GAMMON: Well, strike that, strike that. I

1 better stay with my outline or I'll get lost. Let's, let's go
2 to your, your basic application now. It was filed in November
3 of 1991. Is that correct?

4 MR. SHUBERT: I think the record will reflect the
5 application --

6 MR. GAMMON: Okay. I do too. Okay.

7 BY MR. GAMMON:

8 Q Now, before November of 1991 you must have found out
9 there was an allocation to apply for. How did you learn that,
10 ma'am?

11 A My attorney, Lee Shubert, sent me a newsletter --

12 Q Okay.

13 A -- that had a list of allocations.

14 Q And that was the first indication you had that there
15 was an opportunity to file, to file for a channel in, in
16 Calistoga?

17 A That's right, in Calistoga.

18 Q Okay. And about when did you receive that
19 information please?

20 A It was -- I think it was probably late summer of
21 1991.

22 Q Okay. I'm going to ask you some questions and some
23 of these questions were also asked you at, at your deposition.
24 Have you had an opportunity to review your deposition?

25 A Yes, I have.

1 Q Did you review it with, with an eye toward making
2 any changes or corrections that, that might be necessary?

3 A Yes, I did.

4 Q Did you make any corrections?

5 A Yes, I did.

6 Q Okay. What did you do with the corrections when you
7 made them?

8 MR. SHUBERT: We will provide those to you today,
9 counsel.

10 MR. GAMMON: Well, that's excellent. We're getting
11 so much material today, but the witness is on the stand right
12 now. Could you tell me what areas you, you made corrections
13 in, ma'am? I, I don't mean grammaticals, where you might have
14 used a plural verb instead of a singular or something like
15 that. But matters of substance.

16 MR. SHUBERT: Do you want the corrections now,
17 counsel, and then you can test her on those corrections?

18 MR. GAMMON: Well, sure I want them.

19 MR. SHUBERT: Well, we were going to give them to
20 you after the session.

21 MR. GAMMON: I don't doubt it.

22 MR. SHUBERT: Do we have it?

23 MS. ROSENAU: Yeah, it's right here.

24 MR. SHUBERT: That's his copy?

25 MS. ROSENAU: That's --